

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2019-388-E**

IN RE: Denmark Solar, LLC; Trask East Solar, LLC;)		
Yemassee Solar, LLC; and Blackville Solar)		
Farm, LLC)		
)	PETITION
)	(§58-27-980)
Petitioners,)		(AMENDED)
)	
Dominion Energy South Carolina,)		
Incorporated,)		
Respondent.)		

INTRODUCTION

Denmark Solar, LLC; Trask East Solar, LLC; Yemassee Solar, LLC; and Blackville Solar Farm, LLC (hereinafter as, the, “Projects”, or “Petitioners”) are South Carolina limited liability companies whose sole business is the development of a solar photovoltaic electric generation, with facilities in Bamberg County, South Carolina, Beaufort County, South Carolina, Hampton County, South Carolina and Barnwell County, South Carolina, respectively.

Each of the Projects is party to a Power Purchase Agreement (“PPA”), as is outlined in more detail below, with South Carolina Electric & Gas Co. (“SCE&G”), the corporate predecessor to Dominion Energy South Carolina (“DESC”),¹ which require the Projects to be fully constructed by May 2020. Because of uncertainty regarding the Variable Integration Charge (“VIC”) that may be assessed on the Projects by DESC pursuant to their PPAs dating back to DESC’s initial request for Commission approval of a VIC (in Docket No. 2019-2-E) in February 2019, the Projects have been unable to obtain construction financing in sufficient time to meet the commercial operation deadlines in their PPAs. Petitioners request, pursuant to S.C. Code §58-27-980, (1976, as amended), that this Commission exercise its supervisory authority, granted by the South Carolina General Assembly and described as being, “Full Power and Authority”, to modify the commercial operation deadlines in the PPAs so that the Projects will be able to obtain financing and achieve commercial operation without defaulting on the deadlines under their PPAs. The Projects’ Petition, pursuant to this Commission’s Regulation R. 103-825, and other applicable Rules and Regulations was e-filed with this Commission on December 19, 2019. Events occurring after December 19, 2019, require the Peititoners to amend their Petition, pursuant to R. 103-828, and other applicable Rules and Regulations, which Amended Petition follows.

¹ Although SCE&G is the counter-party to each of the Projects’ PPAs, for ease of reference this Petition will generally refer to DESC instead of SCE&G.

PETITION

Petitioners.

1) **Denmark Solar, LLC** - PPA entered into May 26, 2018 between SCE&G and Denmark Solar, LLC a South Carolina limited liability company, intends at its sole cost and expense, to design, construct and operate a solar photovoltaic electric generating facility, with a nameplate Facility Rating of 6.0 MW-AC and anticipated first year generation of 14,378 MWh at the delivery point located in Bamberg County, South Carolina. The PPA for Denmark Solar establishes a completion deadline on or around May 26, 2020.

2) **Trask East Solar, LLC** - PPA entered into May 26, 2018 between SCE&G and Trask East Solar, LLC a South Carolina limited liability company, intends at its sole cost and expense, to design, construct and operate a solar photovoltaic electric generating facility, with a nameplate Facility Rating of 12.0 MW-AC and anticipated first year generation of 28,663 MWh at the delivery point located in Beaufort County, South Carolina. The PPA for Trask East Solar establishes a completion deadline on or around May 26, 2020.

3) **Yemassee Solar, LLC** - PPA entered into May 26, 2018 between SCE&G and Yemassee Solar, LLC a South Carolina liability company, intends at its sole cost and expense, to design, construct and operate a solar photovoltaic electric generating facility, with a nameplate Facility Rating of 10.0 MW-AC and anticipated first year generation of 24,073 MWh at the delivery point located in Hampton County, South Carolina. The PPA for Yemassee Solar establishes a completion deadline on or around May 26, 2020.

4) **Blackville Solar Farm, LLC** - PPA entered into May 26, 2018 between SCE&G and Blackville Solar Farm, LLC a South Carolina liability company, intends at its sole cost and expense, to design, construct and operate a solar photovoltaic electric generating facility, with a nameplate Facility Rating of 7.2 MW-AC and anticipated first year generation of 17,866 MWh at the delivery point located in Barnwell County, South Carolina. The PPA for Blackville Solar establishes a completion deadline on or around May 26, 2020.

5) The parent Company for the Projects is Southern Current LLC.

This Commission's Decision.

This Petition pertains to the effect of this Commission's Order 2019-847, issued on December 9, 2019, subsequent to and memorializing this Commission's Directive Order of November 15, 2019, in Docket 2019-184-E.

Background for Petition.

As discussed above, Southern Current is developing four utility-scale solar projects in DESC's service territory in South Carolina. Southern Current has invested millions of dollars in the development and interconnection of the Projects to date. Each of the Projects is party to a PPA with DESC that requires the relevant Project to have completed construction by May 26, 2020. Under each PPA, if the Project fails to meet this deadline it must pay DESC "delay damages" ranging from \$660 to \$1320 per day, depending on the size of the Project. Failure to complete construction within 120 days after the deadline is an Event of Default authorizing DESC to terminate the contract. In the event of termination, each Project would owe DESC a "Termination Fee" ranging from \$270,000-\$540,000 (again, depending on the size of the project). Each of the Projects is also party to an Interconnection Agreement ("IA") with DESC under the South Carolina Generator Interconnection Procedures. To date, the Projects have (in total) paid DESC approximately \$1.5 million for work under the IAs.

The PPAs for the Projects allow DESC to impose a "Variable Integration Charge" (VIC) on the Projects based on any change in applicable law that occurs after the effective date of the contract. **When the Contracts were entered into, DESC had neither proposed nor announced any intention to propose a VIC for approval by this Commission.** However, in DESC's 2019 fuel case (Docket 2019-E-2), DESC requested permission from this Commission to impose a VIC on projects with this language in their PPAs, as well as on new projects. *Direct Testimony of John H. Raftery on Behalf of South Carolina Electric & Gas Company*, Docket No. 2019-2-E (Feb. 8, 2019). The VIC proposed by DESC at that time was \$3.96 per megawatt-hour (MWh).

On March 27, 2019, this Commission entered Order 2019-229, bifurcating the proceedings and deferring consideration of the proposed VIC and other issues until later in the year. The Order was premised on the passage of H. 3659 (later to become Act 62) by the South Carolina General Assembly, and also on this Commission's conclusion that:

"The matter of variable integration costs, and their potential impacts and interrelationship with avoided cost rates, is a complex and unique consideration for a fuel proceeding. It has become apparent through the support for bifurcation of this issue . . . that the parties would benefit from additional time to prepare and present their respective cases as to these recently introduced issues." Order No. 2019-229 at 1.

On May 30, 2019, after the passage of Act 62, this Commission opened Docket 2019-184-E to consider DESC's proposals on the VIC, avoided costs, and related issues. DESC again requested approval of a VIC proposal, this time equal to \$4.14 / MWh, in its initial filings in August 2019. On December 9, this Commission issued Order No. 2019-847, which rejected DESC's proposed VIC but applying an "interim value" of \$2.29 / MWh to the VIC, and ordered the initiation of an integration study in accordance with S.C. Code Ann. § 58-37-60 in Dominion's balancing area.²

On December 19, 2019, Intervenor, the South Carolina Solar Business Alliance and the South Carolina Coastal Conservation League / Southern Alliance for Clean Energy filed Motions for reconsideration of Order No. 2019-847, with respect to the VIC and other issues. On January 3, 2020, the Commission issued a Directive Order in Docket No. 2019-184-E, amending Order No. 2019-847 and establishing an interim VIC value of \$0.96 / MWh, which will be adjusted up or down based on the results of an "Integration Study" in DESC territory, which was authorized by Act 62 and Order No. 2019-847. Based on the Commission's Directive Order, the Projects will not know the amount of the VIC they will ultimately be responsible for until the conclusion of that Integration Study.

² On December 19, 2019, Intervenor, the South Carolina Solar Business Alliance and the South Carolina Coastal Conservation League / Southern Alliance for Clean Energy filed Motions for reconsideration of Order No. 2019-847, with respect to the VIC and other issues. If the Commission's future resolution of these Motions creates additional uncertainty as to whether the VIC may increase over the duration of the Projects' PPAs, the Petitioners may amend the Projects' request for relief.

In Southern Current's experience developing solar projects in South Carolina, it generally takes approximately 3-4 months to secure financing for the construction of a utility-scale solar project, from the time the financing party makes an initial commitment of financing. Completion of financing requires that the projected revenues from the project be reasonably certain, which requires that the Project have a fixed-rate PPA executed with the purchasing utility. Financing parties also require that there be no circumstances calling into question the Project's ability to deliver on the commitments in the PPA.

Construction on a solar project can commence only after financing has been secured. From completion of the financing process, it generally takes approximately 6-8 months to complete construction of a utility-scale solar facility of a size comparable to the Projects.

Either of the VIC proposals put forth by DESC (first in February and then in August 2019) would have reduced the Projects' projected revenues significantly, and potentially to the point at which some or all of the Projects would have been financially non-viable. That revenue reduction, and the sheer uncertainty as to what VIC might ultimately be approved by the Commission (and whether it would be fixed or variable over the term of the PPA), has resulted in Southern Current being unable to arrange financing for the construction of the Projects during the pendency of the Avoided Cost proceedings. Even after the Commission's January 3, 2020, Directive Order, the Projects will not know what their ultimate VIC obligation will be until after the Integration Study (which has not yet been scheduled) is completed.

This delay in financing means that the Projects will not be able to meet the completion deadlines in their PPAs. Specifically, if the Projects were to (and could) initiate the financing process immediately, financing probably could not be completed until about May 2020. As discussed, construction generally takes 6-8 months, meaning that the Projects might not be completed until December, 2020, or Q1 of 2021 (or later, if unforeseen circumstances arise). That is substantially past the completion deadline under the PPAs, and DESC would have the right to terminate the PPA for any Project that was not completed until then.

Even though this Commission has ruled on DESC's VIC proposal, the possibility that the Projects' PPAs might be terminated due to financing delays occasioned by past uncertainty about the VIC means that Southern Current's financing parties are unable to extend financing to the Projects at this time. And even if financing could be arranged at this time there is a substantial likelihood that DESC could terminate their PPAs due to completion delays, meaning that the projects will fail.

The Projects have requested that DESC agree to amend their PPAs to extend the completion deadline, but DESC has denied the request. The Projects are seeking relief from this Commission from the effect of this Commission's decision described herein, pursuant to S.C. Code Ann., §58-27-980, (1976, as amended). Unless this Commission extends those deadlines, the Projects will be unable to obtain financing and they will fail. Accordingly, the Projects request that this Commission extend the "Completion Date" in Section 4.2 (and all related milestones) in their PPAs until 12 months after the Commission issues an Order on this Petition, to allow the Projects time to obtain financing and complete construction.

Basis for Petition.

S.C. Code Section 58-27-980

This Commission can grant the relief sought by Petitioner, because this Commission has the following broad statutory authority as to a Utility's Contracts,

"No contract... shall be exempt from alteration, control, regulation and establishment by the Commission, when in its judgment the public interest so requires..."

And,

"...unless [a Contract] be subject to amendment, modification, change or annulment by the Commission..."
S.C. Code Ann. §58-27-980, (1976, as amended).

South Carolina Supreme Court Decisions

- The Public Service Commission of South Carolina is considered the **Expert**, designated by the South Carolina General Assembly to make policy determinations regarding utility rates. Kiawah Property v. Public Service, 597 SE 2nd 145 (2004).
- The Commission sits as the trier of facts, **akin to a jury of experts**, Hamm v. SC Public Service Commission 422 SE 2d 110 (1992).

Relief Sought.

The Projects respectfully request that this Commission exercise its supervisory authority to modify the “Completion Date” in Section 4.2 of each of the PPAs to 12 months after the Commission issues an Order on this Petition and grant other necessary revisions consistent with the Projects’ request for relief. This Commission’s decision will give the Projects sufficient time to arrange financing and complete construction without fear of their PPAs being terminated by DESC due to delays in financing.

DESC is named as a Respondent, because it will be affected by future Orders of this Commission in this matter, but the relief sought is expressly from this Commission.

Reservation of Rights.

The Projects expressly reserve all of the Projects’ rights, previously and as of the date of this filing and going forward, generally and specifically, as to Milestones and as to previously tendered Milestone payment(s).

Petitioners are represented by counsel in this proceeding:

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CONCLUSION

Based on this Amended Petition and this Commission's supervisory authority outlined in more detail hereinabove, this Commission should inquire in this matter and Order the following relief.

WHEREFORE, Petitioners pray for the following relief:

- a. That this Commission exercise its supervisory authority to modify the "Completion Date" in Section 4.2 of each of the Projects' PPAs to 12 months after the Commission issues an Order on this Petition;
- b. That this Commission grant other necessary revisions/additions consistent with the Projects' Petition for relief; and
- c. THAT THIS COMMISSION GRANT SUCH OTHER AND FURTHER RELIEF AS IS JUST AND PROPER.

Respectfully Submitted,
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As Counsel for Denmark Solar, LLC; Trask East Solar, LLC; Yemassee Solar, LLC; and Blackville Solar Farm, LLC.

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